DOCUMENT RESUME

ED 443 205 EC 307 897

TITLE	Extended School Year Services for Students with Disabilities.
INSTITUTION	North Dakota State Dept. of Public Instruction, Bismarck. Div. of Special Education.
PUB DATE	2000-04-03
NOTE	23p.
AVAILABLE FROM	North Dakota Department of Public Instruction Department of Special Education, 600 E. Boulevard Ave., Dept. 201, Bismarck, ND 58505-4149; Tel: 701-328-2277 (Voice); Tel: 701-328-4920 (TDD); Fax No: 701-328-4149.
PUB TYPE	Guides - Non-Classroom (055)
EDRS PRICE	MF01/PC01 Plus Postage.
DESCRIPTORS	Ancillary School Services; Compliance (Legal); Delivery Systems; *Disabilities; Educational Legislation; Elementary Secondary Education; *Eligibility; *Extended School Year; Federal Legislation; *Federal Regulation; Individualized Education Programs; Legal Responsibility; *Special Education; Summer Schools
IDENTIFIERS	*Individuals with Disabilities Educ Act Amend 1997; *North Dakota; Related Services

ABSTRACT

These guidelines are intended to assist North Dakota educators in complying with the Individuals with Disabilities Education Act (IDEA) 1997 concerning provision of extended school year (ESY) services to students with disabilities. Presented in a question-and-answer format, guidelines are closely correlated with the IDEA regulations. Individual sections address the following topics: (1) reasons for ESY; (2) the legal authority for ESY; (3) determination of need for ESY (eligibility, responsible personnel, role of the individualized education program (IEP) team); (4) determination of ESY services (IEP team responsibilities concerning student objectives and least restrictive environment requirements); (5) related services (requirements for receiving related services during an ESY); (6) summer school (provision of ESY services as part of a district's optional summer school program); (7) procedural safeguards; (8) special circumstances; and (9) funding. (D3)

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Extended School Year Services for Students with Disabilities

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Acknowledgements

This document was designed and developed by the North Dakota Department of Public Instruction. The North Dakota Department of Public Instruction gratefully acknowledges the support and assistance of Mountain Plains Regional Resource Center, particularly John Copenhaver who provided advice and reviewed the document, and Shauna Crane who conducted a search for resources.

Extended School Year Services for Students with Disabilities was produced by the Office of Special Education, North Dakota Department of Public Instruction.

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Why Extended School Year (ESY)?

The 1997 amendments to the Individuals with Disabilities Education Act (IDEA 97) give educators responsibility for development and delivery of a free appropriate public education (FAPE) to students with disabilities. IDEA 97 defines FAPE as special education and related services that are provided at public expense and are provided in conformity with an individualized education program (IEP).

Section 300.13 **Free appropriate public education**
As used in this part, the term free appropriate public education or FAPE means special education and related services that:

a) Are provided at public expense, under public supervision and direction, and without charge;
b) Meet standards of the SEA, including the requirements of this part;
c) Include preschool, elementary school, or secondary school education in the State; and
d) Are provided in conformity with the individualized education program (IEP) that meets the requirements of 300.340-300.350.

Authority: 20 U.S.C. 1401 (8)

A central issue in FAPE is the IEP team's determination of what services are appropriate. A primary concern is whether a school district has followed IDEA procedures. The process utilized in development of the IEP ensures that children with disabilities have appropriate education planning, based on appropriate evaluation, to accommodate their unique instructional needs, and that these needs are met in an appropriate learning environment. The IEP process ensures that children with disabilities receive an appropriate education.

Another question regarding appropriate education is whether the educational program is sufficient to provide meaningful educational benefit. The concept of benefit is an integral part of the IEP process. The IEP team examines a child's present level of development or skill acquisition, as well as the child's ability to progress beyond that level if provided with an effective program. If that program results in measurable advancement toward goals and objectives that are appropriate for the child, then the child has received an appropriate education because he or she has benefited from his or her schooling. Thus, progress towards goals and objectives, and documentation of that progress become core concerns in the provision of FAPE.

Some children with disabilities may not receive FAPE unless they receive needed services during time periods when other children, whether they have a disability or not, normally would not be served. As part of the IEP process, a multidisciplinary team must determine if a child needs a program of special education and related services extending beyond the normal school year. For such a child, restricting services to a standard number of school days per year does not allow development of an education program that is truly individualized. A child may require extended school year (ESY) services in order to receive FAPE.

The critical question that each IEP team must ask regarding ESY services is whether the learning that occurred during the regular school year will be significantly jeopardized if ESY services are not provided.

Reasons why ESY services may be needed vary from child to child, but the end result is that some children may suffer severe losses of social, behavioral, communication, academic or self-sufficiency skills during interruptions in instruction. This is particularly true during long breaks such as summer vacations. Losses suffered by a child may be so extensive that when school resumes, unreasonable amounts of time are needed to recover (recoup) lost skills. Other children may experience losses because they reach critical learning stages at the end of a school year and need ESY services to avoid irreparable loss of learning opportunity. For some children, skills that support continued placement in the least restrictive environment (LRE) can be maintained only by ESY services.

The determination of whether a child with a disability needs ESY services must be made on an individual basis following the IEP process. The critical question that each IEP team must ask regarding ESY services is whether the learning that occurred during the regular school year will be significantly jeopardized if ESY services are not provided.

Legal Authority for ESY

ESY was first established in federal law by IDEA 97. Prior to that time, the basis for interpretation of ESY requirements was drawn from case law. IDEA 97 does not create new legal standards for ESY services but brings together well-established case law in this area.

Section 300.309 **Extended School Year Services**
(a) *General.*
(1) Each school shall ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.
(2) Extended school year services must be provided only if a child's IEP team determines, on an individual basis, in accordance with Sections 300.340-300.350, that the services are necessary for the provision of FAPE to the child.
(3) In implementing the requirements, a school may not –
(i) Limit extended school year services to particular categories of disability; or
(ii) Unilaterally limit the type, amount, or duration of those services.
(b) *Definition.* As used in this section, the term extended school year services means special education and related services that:
(1) Are provided to a child with a disability:
(i) Beyond the normal school year of the school;
(ii) In accordance with the child's IEP; and
(iii) At no cost to the parents of the child; and
(2) Meet the standards of the state.
(Authority: 20 U.S.C. 1412(a)(1)

The analysis of comments that accompanied the final regulations provides clarification of responsibilities for ESY services. It is the obligation of the school district to ensure that children with disabilities who require ESY services in order to receive FAPE have necessary services available to them. The individualized determination about the need for ESY services is made through the IEP process. The right of an individual disabled child to ESY services is based on that child's entitlement to FAPE. (*Federal Register*, Vol. 64, No. 48, 1999, pg. 12576.)

Extended school year services are also authorized under state law in North Dakota.

The legislative assembly recognizes that a student with disabilities whose individualized education program so requires is entitled to an educational program in excess of one hundred eighty days per year if regression caused by an interruption in educational programming, together with a student's limited recoupment capacity, renders it impossible or unlikely that the student will attain the level of self-sufficiency and independence from caretakers that the student would otherwise be expected to reach in view of the disability.
(Authority: ND Century Code 15-59-02.1)

Determining Need for ESY

Who is eligible for ESY services?

All children with disabilities who have a current IEP must be considered for ESY services at least annually. To ensure FAPE, the multidisciplinary team must consider and document whether ESY services are needed for each child regardless of the child's disability(ies). The changes resulting from IDEA 97 clarify that a school district may not limit ESY services to particular categories of disability, or unilaterally limit the type, amount or duration of those services. These requirements apply to all children with a disability between the ages of three and 21.

Who determines the need for ESY services?

Determination of need rests with the IEP team, which must be composed of the following individuals: parent(s) of the student, the child if appropriate, general education teacher(s), special education and related service providers, administrator or school district representative, and others as appropriate. IDEA 97 intends that all persons involved in the IEP process be active participants. Each person fulfills an important role by bringing and sharing critical information about the child and his or her need for ESY services.

What determines the need for ESY services?

The primary criteria in determining a child's need for ESY services are the likelihood of significant regression of previously learned skills during a break in service, and limited or delayed recoupment of these skills after services resume. The courts have found that the regression/recoupment measures are an integral part of the determination of need for ESY services, although they are not the only measures.

In determining significant regression and limited recoupment, it is important to consider the distinction between generalization and maintenance. A loss of skills over time could be due to failure to maintain performance or failure to generalize acquired skills to new settings. Many children do not easily generalize acquired skills to environmental conditions beyond those under which initial learning took place. In terms of interventions, the distinction between maintenance and generalization is essential. Regression may be an indication of either or both.

The courts have also identified a range of factors that must be considered by the child's IEP team when determining the need for ESY services. (See the following question.) These factors, alone or in combination, increase the likelihood that a child will experience significant regression and limited recoupment and thus require ESY services.

The IEP team must consider regression/recoupment measures, in addition to all appropriate factors, in determining whether the learning that occurred during the regular school year will be significantly jeopardized if the child is not provided ESY services.

Regression – A decline to a lower level of functioning demonstrated by a decrease of previously learned skills which occurs as a result of an interruption in educational programming.

Recoupment – The ability to recover or regain skills at the level demonstrated prior to the interruption of educational programming.

What factors should be considered when determining need for ESY services?

School districts should use regression recoupment criteria in determining the need for ESY services, but a broad range of relevant factors must also be considered. The factors to be considered in making ESY placement decisions shall include, but are not limited to the following.

School districts should use regression/ Recoupment criteria in determining the need for ESY services, but a broad range of relevant factors must also be considered.

- **Category of disability**. Children with disabilities requiring consistent, highly structured programs may be predisposed to regression when their services are interrupted. These children may also have limited recoupment capacity.

- **Severity of disability**. Although limited recoupment capacity can occur among children with moderate disabilities, it is more likely to be a learning characteristic of children with severe disabilities. Children with the most severe emotional disturbance, for example, are more likely to revert to lower functioning levels or to exhibit inappropriate behaviors, such as extreme withdrawal or anxiety reactions, when their programs are interrupted. For many of these children, each successive interruption in programming and consequential regression also reduces the level of motivation and trust and may lead to an irreversible withdrawal from the learning process. Finally, children with severe disabilities are more likely to have difficulty attaining the goals of self-sufficiency and independence from caretakers, and may need additional help and support to reach those goals.

- **Parents' ability to provide an educational structure at home.** A parent or guardian may be unable to maintain a child's level of performance during a break in programming because of the complexity of the program, time constraints, lack of expertise, or other factors. This consideration is relevant to whether a child can be expected to regress. Also relevant is the child's stage of mastery of crucial skills or behavioral controls at the point of interruption in programming.

  When appropriate, school districts should consider offering training to parents to help them maintain their child's level of performance during interruptions in programming. School districts may also consider offering support services in the home, either directly or in cooperation with other agencies, if such services will prevent the child's regression during breaks in programming. School districts are free to utilize the resources of other public or private agencies in order to meet the child's needs, so long as there is no cost or financial liability to the child's parents or guardians.

- **Child's rate of progress**. Just as every child's rates of learning, regression, and recoupment are different from that of other children, an individual's rate of learning specific skills or behaviors may differ from his or her rate of attaining other skills. Certain skills or behaviors are particularly essential to meeting the goals of self-sufficiency. For example, basic self-help skills, such as toileting or eating, are essential for minimal independence; stable relationships, impulse control and appropriate peer interaction are necessary for community living. Therefore, if a child would suffer significant regression in a skill or behavior which is particularly crucial to reaching the goal of self-sufficiency and independence from caretakers, the child requires continuous education programming in that skill or behavior area.

  Another relevant concern is the extent to which the child has mastered and consolidated an important skill or behavior at the point when the program is interrupted. Since behaviors or skills that have not yet been generalized, mastered, and consolidated are more easily lost, a child is more likely to regress in that skill or behavior area if his/her programming is interrupted before mastery and consolidation have been achieved.

Current court cases also include the following factors to be considered in determination of need for ESY services: (1) the child's behavioral and physical problems; (2) availability of alternative resources; (3) the ability of the child to interact with children who do not have disabilities; (4) the areas of curriculum that need continuous attention; and (5) the child's vocational needs.

How is the need for ESY services measured?

Determination of the need for ESY cannot be based on a formula. Formulas lack the individualization to ensure that children with disabilities have appropriate educational planning to accommodate their unique needs. Case law supports this conclusion: the determination of need for ESY services cannot be based on a policy that prohibits or inhibits full consideration of the needs of each child with a disability.

The information that is needed by an IEP team to determine a child's need for ESY services is gathered through ongoing measurement of the child's progress toward the current IEP goals and objectives.

The information that is needed by an IEP team to determine a child's need for ESY services is gathered through ongoing measurement of the child's progress toward the current IEP goals and objectives. An essential component of a child's goals and objectives is the method to measure progress. Information can be gathered through a variety of informal and formal measures. Those measures may include a record of daily performance, criterion-referenced and norm-referenced test data, anecdotal records from information collected throughout the year, behavior checklists, or student work samples.

As stated in the ND DPI *Guidelines: Individualized Education Program Planning Process*, "annual goals are a means of gauging progress and change in knowledge, skill and behavior that can be reasonably accomplished in a 12-month period of time. The short-term objectives serve as a reference for measuring progress toward meeting goals." When reviewing a child's IEP, the team must consider the child's progress in meeting goals and objectives in terms of regression and recoupment that the child may experience throughout the year. The IEP team's review determines if the learning that has occurred will be significantly jeopardized if ESY services are not provided during an extended break in services.

Progress toward meeting goals and objectives is monitored on a regular basis through periodic reports given to parents at least as often as all other parents are informed of their children's educational progress. The periodic report includes a description of the child's progress toward meeting each goal and its corresponding objectives. The review of progress uses the same measurement criteria specified in the objectives. The review clearly specifies how the child's performance at the time of review is different from performance observed at the time the IEP was written, addressing any lack of expected progress toward annual goals and possible regression recoupment concerns.

As with all other components of the IEP process, parents must be involved in decisions regarding a child's educational progress, including progress toward annual goals. Parents must receive a periodic review of the child's progress toward annual goals and the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year. This record of progress is important to the team's consideration of need for ESY services.

In addition to the valuable information already being gathered to determine progress toward annual goals and short-term objectives, a child's IEP team should consider the following points in determining the need for ESY services.

- Consider information from a variety of sources.
- Measurement should be sensitive to small changes that may occur during short breaks in services.
- Measurement information should be gathered during the child's performance after long weekends, vacations, and past summer breaks.
- The team should consider both prior experience with regression recoupment and predictive information.

In considering evidence of regression, a team should select information that is measurable, with baseline, intermediate, and ending points establishing measurements at predictable intervals. The series of measurements must embrace the time span including the interruption of services. The minimum points of measurement are: (1) at the end of instruction (i.e., the end of the current school year); (2) at the beginning of subsequent instruction (i.e., the beginning of the next school year); and (3) at the time of recoupment (i.e., the date of regaining skills that had been attained by the end of the previous school year). A difference in skill attainment following an interruption in services is a measure of regression. Identifying how much time is required for regaining lost skills may require several measurements to determine when recoupment actually takes place.

In addition to these measures, the IEP team must consider the valuable information gathered through observations and input from the family, the child, and educators. This input is critical in developing an accurate and complete picture of the child's level of functioning and to supply information such as regression and recoupment history, performance in the classroom, community-based activities, family circumstances, and recent behavioral and medical problems.

When is regression/ recoupment considered severe or significant?

Research shows that regression and recoupment occur in all children and will vary across skills, people and circumstances. The concern is that for some children with disabilities the regression is so severe and the recoupment period so long that without ESY services, the learning that occurred during the regular school year would be significantly jeopardized if ESY services are not provided.

IDEA 97 regulations and current court cases do not address the extent of regression/recoupment needed to qualify for ESY services. The determination of need for ESY is made on an individualized basis after careful and critical analysis of the on-going data gathered by the IEP team.

Is the IEP team required to demonstrate regression before ESY services are provided?

No. A child cannot be required to fail, or be required to demonstrate a lack of progress for an entire year, simply to prove need for ESY services. If no empirical data are available on regression, the need may be shown by expert opinion or prospective criteria established by the IEP team.

How often must a child be considered for ESY?

All children with disabilities must be considered for ESY services at least annually.

Does receipt of ESY services one summer assure such services the following summer?

No. A child's involvement in ESY services one year, does not automatically guarantee services in the following years. Similarly, the fact that no ESY services were provided in a prior year does not mean ESY services are not needed in the current year. The decision is made on an annual basis.

If a child does not meet all of his or her IEP goals and objectives during the regular school year, does this mean ESY services are required?

No. ESY services should not be granted solely on the basis of the child with disabilities not achieving one or more IEP goals or objectives. The critical question that each IEP team must ask regarding ESY services is whether the learning that already occurred during the regular school year will be significantly jeopardized if ESY services are not provided.

Is the IEP team required to document the justification of the need for ESY services?

Yes. After the child's IEP team has completed the discussion regarding ESY, the final part of Section J on the child's IEP form must be completed. This will document justification for the team's decision.

Extended school year MUST be considered for each student with a disability. Justification for the decision made MUST BE STATED BELOW.

[ ] The review of each goal indicates that an extended school year is needed.

[ ] The review of each goal indicates that services will be in effect for the normal school year.

[ ] The team needs to collect further data before making this determination and will meet again by _____

Justification for the above decision:

Determining Services for ESY

When should the IEP team meet to determine ESY services?

The team must consider the needs for ESY services at the annual IEP meeting. However, under some circumstances the need for ESY services and the characteristics of ESY services may not be known at the time of the annual IEP meeting. In that case, the team can identify the date it will reconvene to determine need and services to be provided. The team may also plan what data should be gathered to assist in making those later determinations. An addendum documenting ESY determinations would then be completed and attached to the current IEP at that later time.

The regulations do not specify a minimum timeline, in terms of how many days in advance of the end of the school year, that team determinations must be finalized. According to the analysis of IDEA final regulations "public agencies are expected to ensure that these determinations are made in a timely manner so that children with disabilities who require ESY services in order to receive FAPE can receive the necessary services." (*Federal Register*, Vol. 64, No. 48, 1999, pg. 12576.)

The IEP team meeting during which ESY needs and services are determined should be accomplished in sufficient time to permit any party to exhaust administrative remedies prior to the break in services. Thus, the IEP document will serve to notify the parents of whatever ESY determinations have been made. As part of the IEP process, the parents are fully informed of their rights and of procedures through which they may question a decision of the IEP team.

Should new goals and objectives be developed for ESY services?

No, ESY services address the maintenance of previously learned skills, as identified in the current IEP. The intent of ESY services is not to teach new skills. Therefore, new goals and objectives should not be added to a child's IEP for implementation of ESY services.

How does the IEP team determine the amount of ESY services for each child?

The determination of the extent of services must be made on an individual basis after a thorough review of the child's goals and objectives. The IEP team must determine how much time is needed to assure maintenance of previously learned skills that would be jeopardized if the child did not receive ESY services.

How do LRE requirements relate to ESY decisions?

ESY services must be provided only if the child's IEP team determines, on an individual basis and in accordance with IEP requirements, that the services are necessary for the provision of FAPE. "In accordance with IEP requirements" means the team must specify the types and amounts of services consistent with the needs of the individual child with a disability and that child's right to FAPE.

The requirements regarding placement in the least restrictive environment (LRE) during the academic year also apply to ESY. However, "while ESY services must be provided in the LRE, a school district is not required to create new programs as a means of providing ESY services to students with disabilities in integrated settings if the school district does not provide services at that time for its non-disabled children." (*Federal Register*, Vol. 64, No. 48, 1999, pg. 12577). Thus, LRE considerations for ESY are not identical to LRE considerations that apply during the regular school year. The full continuum of educational options is usually not available during ESY, and the district is not required to create such a program for that sole purpose.

That same source states that a public agency is not prohibited from providing ESY services to an individual child with a disability in a non-educational setting if the child's IEP team determines that the child could receive necessary ESY services in that setting. The characteristics of services, including location and LRE considerations, should be based upon the unique needs of the child. The IEP team should consider a flexible service model that takes those needs into account. For some children, the appropriate LRE could be at home with the other family members, receiving only very limited ESY services.

Where can ESY services be provided?

ESY services are intended to minimize the effects of significant regression. Therefore, it is reasonable for ESY services to concentrate on areas at risk for significant regression. Because of this focus, ESY services may differ markedly from the services provided to a child during the school term. Services would logically be modified in a way to enhance generalization and maintenance of skills. As with any IEP, the needs of the child dictate the services, rather than any available services dictating what is provided to the child.

Individualized ESY services could be provided in a traditional classroom setting; however, the location and nature of service delivery can vary with the needs of the child. Other appropriate service delivery options could include:

- school based programs that vary in length of schedule (e.g., art classes, drama);
- grouping of students with similar goals and objectives;
- intra-school cooperative programs (e.g., Title 1);
- a cooperative program with another agency (e.g., wraparound services, Head Start);
- limited student contact, perhaps 3-4 times during the summer to prevent regression;
- a week of intensive review just prior to the beginning of the school year;
- multi-district shared programs or services;
- contractual arrangements;
- community based programs (e.g., parks and recreation activities);
- transition opportunities (e.g., JTPA/Workforce Investment Act); or
- home-based services provided by the parent an supported by school personnel.

Some students may need services provided in the home or at an alternative location. Others might benefit most by providing training to the parent in advance of long breaks in regular school schedules. The teacher and parent would work together, with materials sent home and progress periodically monitored by the teacher. Such home consultation prior to vacation and at intervals during vacation, if needed, could provide support and instruction to parents in preventing regression. It offers the additional benefit of increased opportunities for practice and generalization across settings. However, a school district cannot simply choose to delegate its responsibilities for providing ESY services to parents. The option of home consultation would depend upon availability of parents throughout the ESY day, their desire to assist, and the complexity of their child's needs, as well as many other factors.

For other students and depending upon the nature of the skill to be maintained, a summer camp, recreational program, or a district's optional summer school program could provide opportunities for maintenance of skills.

Related Services

Must the IEP team consider the provision of related services as ESY services?

Yes. The IEP meeting participants must consider whether the child requires related services, including transportation, in order to benefit from special education.

Is it necessary to make a separate showing of significant regression and poor recoupment of skills directly addressed by a related service, in order for a child to receive related services during an ESY?

No separate showing of regression-recoupment problem is required to establish need for related services. What is required is a showing that related services are needed to assist the child to benefit from special education during the regular school year, thus assuring FAPE.

May a district provide a related service as a sole component of ESY services?

When determining eligibility for ESY services, the IEP team must also review and consider related services. While a child may not need extended school year special education, that child may need extended school year related services in order to benefit from special education when school resumes during the school term. In this instance, one or more related services may be the sole component(s) of the extended school year program. The decision as to whether the child should be provided a related service as the sole component of an extended school year program is the responsibility of the IEP team. The team should consider whether, without such ESY related service, there would be regression problems in the child's special education program when school resumes. If a related service is necessary for the student to benefit from special education either during the ESY or regular academic school schedule, that related service must be provided. If a student needs only a related service during ESY, it must be provided.

Is transportation provided as part of ESY?

Transportation is a related service and must be offered if it is necessary for the student to benefit from special education. If necessary, transportation should be added as a related service for the duration of ESY services.

Who can provide ESY services?

It is necessary to use licensed and qualified staff for ESY services. Non-licensed staff can be used if they are trained and supervised by licensed staff. Staffing options might include supervised practicum students, supervised student teachers, supervised paraeducators, or contracted/purchased services from agencies.

Summer School

Is ESY the same as summer school?

The following table provides a comparison of ESY services and summer school features.

Summer School	Extended School Year Services
Definition: An optional or permissive program provided beyond the regular school year. A school district may elect whether to operate summer classes. North Dakota's compulsory attendance requirements do not apply to summer school.	Definition: Services required by IDEA 97 to be provided beyond the traditional school year for any child with a disability who needs special education services and/or related services in order to receive a free appropriate public education (FAPE).
Purpose: Teaching new content or enrichment, offering recreational or academic opportunities not present during the regular school year. Children with and without disabilities benefit from additional educational opportunities.	Purpose: Assuring a child's meaningful progress during the regular school year (FAPE), by maintaining learned skills and preventing loss of critical skills. If services are not provided, child's skills are temporarily or permanently lost, jeopardizing progress. ESY services are not provided for the purpose of helping children with disabilities advance in relation to their peers.
Cost: Often on a fee basis.	Cost: Free to parents.
Duration: Typically operated on a set schedule for a number of weeks during the summer for all those who participate.	Duration: Schedule, setting, and extent of services designed to meet the individual needs of a child in order to assure FAPE. The amount and duration of services cannot be determined arbitrarily by a district's summer school schedule.
General education setting, based on needs and interests of all children.	Specially designed instruction based upon a child's individual needs.
A child's participation does not depend on a team determination of need.	IEP team determines need and extent of services to meet the unique needs of the child.

May the child's ESY services be provided in a district's optional summer school program?

Yes. The summer school setting could offer unique and appropriate opportunities for a child to enhance generalization of skills in a setting very similar to that of the regular school year, as well as provide frequent practice for maintenance of skills. However, ESY services must be tailored to the unique needs of the child and cannot be based solely on availability of services during the summer. The amount and the duration of ESY services cannot be limited arbitrarily to the district's summer school schedule.

It is recommended that special education personnel collaborate with summer school staff, informing them of needed modifications and accommodations based upon the child's needs. The IEP team will determine and document goals and objectives to be addressed by ESY services and delivered through summer school programming. Progress reports are required at least as often as those provided to the parents of students without disabilities.

What are the responsibilities of a school district for providing modifications and accommodations for a child with a disability who chooses to attend summer school and is not in need of ESY services?

All children with IEPs are entitled to accommodations. Since these children are also eligible under Section 504 of the Rehabilitation Act of 1973, it is best practice to consult with the summer school teachers and inform them of the needed modifications and accommodations as stated in the child's IEP. Under Section 504, a school cannot discriminate against a child with a disability in any program and/or activity offered by that school. The summer school course is a program offered by the school and therefore cannot discriminate against the child because of his or her disability.

How does an IEP team document ESY services?

Documentation of ESY services should specify which goal(s) will be reinforced during ESY services. Documentation should describe the type of services (such as direct instruction, specific related services, consultation, or supervision), the beginning date of services and the ending date of services, the minutes per week of each service, service provider, and where the service will be provided.

Procedural Safeguards

What are the procedural safeguards regarding ESY?

Parents are entitled to a meaningful opportunity to fully participate in discussion of their child's needs and the development of their child's educational plan, which includes the ESY decision, and they must be fully informed of the ESY determination process.

Because consideration of ESY is a required component of every annual IEP, provision of procedural safeguards and prior written notice of the meeting for the annual development of the IEP constitutes adequate notice of contemplation of ESY services. Prior Written Notice affords the parents of the opportunity to participate in the determination of that decision. The parents of each child with a disability must be advised at each annual IEP meeting that ESY services are available for those students who are eligible.

If the parent is not available during an IEP meeting, notice must be sent to them. A copy of the IEP constitutes that notice, documenting the team determinations. Parents are not required to respond immediately upon receipt of the notice or upon being informed during the IEP meeting. Such notice gives the parents a chance to request reconsideration if the team had determined that ESY is not considered appropriate for their child, and to exhaust administrative remedies if ESY services are not recommended by the IEP team. A case manager would need to respond formally with a written prior notice to any team member's request for reconsideration which is made outside of the IEP meeting. That prior written notice would then provide new meeting information if the team planned to reconvene, or notice of refusal, along with reasons.

What process should be followed if the parent does not agree to the child receiving ESY services?

Some parents will decide not to have their child participate in ESY services, even if they qualify. If the family chooses to reject all ESY service options, the team should document this decision. Because compulsory attendance laws do not extend to days beyond the traditional school year, a school district cannot compel a student to participate in ESY services.

What process should be followed if the parent initiates a request for ESY services or a change in the extent of those services, outside of the IEP meeting?

If a parent requests reconsideration of need for or extent of ESY services, outside of the team meeting, and the team has already made a determination regarding ESY services, then the school district must provide Prior Written Notice to the parents, documenting either the date and time of a new IEP team meeting to reconsider the request, or denial of the request along with reasons for the denial.

State policy strongly recommends that the parties attempt to resolve any disagreements locally through informal means, working through local administration whenever possible. In addition to informal dispute resolution processes, a parent has the right to file a complaint or to request a due process hearing when disagreeing with an IEP team's decision(s) regarding ESY.

Special Circumstances

What is the status of a child's ESY services when there is a dispute over proposed services?

It is important for the IEP team to make decisions regarding the provision of ESY services early enough in the school year to allow parents the time to request administrative remedies when they disagree with a team's denial of services. If the parents disagree with the decision of the IEP team not to provide ESY services, and the timing of the decision does not allow sufficient time to obtain resolution of the dispute, then it is recommended that the child be provided with ESY services pending the outcome of the dispute resolution process.

Parents need to be given a reasonable amount of time after being notified to express their disagreement with the denial of ESY services. It is recommended that a school district develop a policy regarding timelines that are reasonable. It is also recommended that the policy be clearly explained or made known to the parent. If the parents do not provide a timely response, then the district should not be required to provide the child with ESY services pending the outcome of the dispute resolution process or administrative proceedings.

How are ESY services determined for a child turning three over the summer months?

Section 300.121(c)(1) states that a child with a disability must receive FAPE no later than his or her third birthday. The analysis of comments that accompanied the final regulations state, "The IEP or IFSP will specify whether services must be initiated on the child's third birthday for children with disabilities who transition from the Part C to the Part B program, if the child turns three during the summer." (*Federal Register*, Vol. 64, No. 48, 1999, pg. 12577). The IEP or IFSP developed for a child who will reach age three during the summer must specify the child's program upon the third birthday, including ESY services, if needed by that particular child to receive FAPE. If ESY services are not needed to provide FAPE, the date of initiation of services would be the beginning of the upcoming school year.

Measuring the vulnerability of skills acquired by young children is difficult. It is not necessary or advisable to wait until delays occur before providing services to very young children. An IEP team may assume that a young child with disabilities who has been enrolled in an Infant Development program is predisposed to regression due to age and the severity of disabilities.

When a child with disabilities reaches the third birthday during the summer, necessary personnel may not be available. Therefore, personnel must ensure that a meeting is held at least 90 days prior to the third birthday while necessary personnel are available. The local special education unit must either assume responsibility for planning and directly implementing services to be initiated on the child's third birthday, or contract for these services directly with the regional Infant Development Program service provider or Human Service Center.

Can children with disabilities who have been placed by their parents in private schools receive ESY services?

The analysis of comments that accompanied the final regulations state, "As is true for determinations regarding services for children with disabilities placed in private schools by their parents, determinations regarding the services to be provided, including types and amounts of such services and which children will be served, are made through a consultation between representatives of public agencies and representatives of students enrolled by their parents in private schools. Through consultation, if a determination is made that ESY services are one of the services that a public agency will offer one or more of its parentally-placed disabled children, Part B funds could be used for this purpose." *(Federal Register,* Vol. 64, No. 48, 1999, pg. 12577).

For more information on private schools and services for students with disabilities who are parentally placed, see the ND DPI Policy Paper, *1997 Private Schools Amendments for Students with Disabilities.*

Funding

How is ESY funded?

Congress passed the Education for All Handicapped Children Act in 1975, offering federal financial assistance to states to assist them in the development and improvement of educational programs for students who were eligible for special education. To qualify for assistance, states are required to submit plans to the federal government that assure that all eligible students with disabilities will receive FAPE. The current authorization of IDEA 97 defines FAPE in part as special education and related services designed to meet the unique needs of a child with a disability, providing an appropriate education that confers meaningful benefit.

Under present funding authorities, if a school district determines that a child with a disability requires particular special education and related services, the district is required to provide those services in conformity with an IEP. A district may determine that a child with a disability requires ESY services in order to receive FAPE. Thus, ESY special education and related services qualify for the use of Part B funds from IDEA 97.

The state of North Dakota also provides funds to assist school districts with costs for serving children with disabilities, including those who require ESY services. A primary source of state funding is based on Average Daily Membership (ADM), which is determined by student enrollment (total student population). Another significant source of state support provides funding assistance to a district when the costs of an individual child's special education and related services are higher than average.

ESY services cannot be limited to children who require a minimum number of hours of ESY services. A school district may not use budgetary constraint as a reason not to provide ESY services to an eligible student. It is expected that each district will plan for ESY expenditures as part of its annual budget, since the assurance of the provision of FAPE is a necessary condition for receiving Part B funds. Any child who requires ESY services in order to receive FAPE must be provided with needed ESY services.